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EDITORIALS.

DO WE NEED THE LEGAL MUCKRAKER?

Do we need the legal muckraker any longer? I think not.

At any rate, I am sure not, if he is to use misrepresentation in his appeals to excite public sentiment. Under the term "misrepresentation" I include a fact knowingly so stated as to produce a false impression of it for the purpose in hand.

In recent articles in popular magazines, Messrs. Snyder and Connolly have published strong censures of our system of justice, in particular of our judicial methods. In the latest articles the honesty of our judicial personnel comes to be attacked. The spirit and method of these articles does not commend itself. In some of them, passages of my writing have been quoted in support. I stand by what I have ever said; but I disclaim sympathy with the spirit and method of those articles, and I venture to hope that my writings may not again be used by those authors for that purpose.

The article I desire here to criticize is entitled "Big Business and the Bench," second article, by C. P. Connolly, and appeared in *Everybody's Magazine* for March, 1912, page 291. In thus citing the volume and page of what I criticize, I do more than that writer does; for although he specifically censures a dozen Supreme Court decisions in various states, he does not in a single instance give the citation by which the correctness of his censure can be verified. Only by an occasional proper name or date can his cases be discovered in their original reports.

To discover the basis for his censure, I have thus traced the first two of them. What I found justified me in stopping at that point, and in now stating that misrepresentation, in the inclusive sense above used, is a part of the method used in that article; and in that kind of muckraking I see no advantage for any honorable cause. Let me particularize:

The article begins by stating the author's plan to show "to the citizen of one community the corruption of a court in another community," and continues by referring to "how widely the corruption by direct and indirect corporate influence has extended." He proceeds to emphasize railways as a special influence of that sort; "in many a state, litigants who approach the courthouse find that there is a railway side-track leading into the court-room, and that the locomotive blocks the door to justice." Then, taking the state of Missouri for his first illustration, he speaks of the Missouri Pacific Railroad as requiring to "look to the complexion of

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the Supreme Court of Missouri," and as securing for its lobbyist a political boss who "got more of his friends on the Supreme Bench of Missouri" than a certain other boss. The entirely obvious meaning, which the author does not choose to state in so many words, is that the Missouri Pacific Railroad had a corrupt control of the personnel of the Supreme Court. Then follows the supposed proof or illustration, in the shape of two decisions of that court; these, as stated by the journalist, are adapted to make the reader feel that the corrupt tree has naturally brought forth evil fruit.

Now I shall not burden these pages with any labored attempt to analyze the decisions he uses and to show that any intelligent lawyer would realize that there was another side to both of them. Both dealt with general principles which are intrinsically hard to handle and have long been the subject of differing views in the various courts of this country and England. On such points, the decision of a Supreme Court one way or the other throws no more light on the corruptness or honesty of its personnel than does a man's vote for the Republican or Democratic ticket; it merely shows that the other person's view differs from ours, and perhaps that he is wrong and we are right.

But what I desire to call attention to is the unfair use made by the journalist of those two cases to prove or illustrate his point that the Missouri Supreme Court is the corrupt tool of the Missouri Pacific Railroad. And here is how he misrepresents them:

(1) One of the cases is *Murphy v. Wabash Railway Co.*, 1910, 228 Mo. 56. I pass over the circumstances that the journalist refrains from giving the citation; also that it is not a Missouri Pacific case. Now, assuming that the judicial doctrine in this case as represented by him is open to criticism, what he has done is to *represent as a decision of the Supreme Court the dissenting opinion of a single judge* of that court. Anyone who desires to verify this may consult the above citation. The fact was that the Supreme Court decided *for the plaintiff and against the railroad*, with one judge out of the seven dissenting. Yet the journalist cites this dissenting opinion's language as one of his two illustrations of the corrupt control of the court by the railroad!

(2) His other instance is the case of *Oglesby v. Missouri Pacific Railroad*, 1903, 177 Mo. 272, a case which has been several times to the Supreme Court between 1893 and 1903. Note that the journalist again does not give the citation of this case in any of its five reported decisions; and I have not tried to follow up the earlier ones. But the fact is that the above and last decision was by a divided court, four to three, in favor of the railroad; that the first three were in favor of the employe-plaintiff, and that in two of those three the court stood six to one; while in the

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fourth instance the decision in favor of the railroad was made (as I infer from the fifth opinion) only by a majority of four to three. In other words, during those ten years, while the various members of the court gave 35 votes in all on the case, *a substantial majority*, at least 22 and perhaps 24 of the 35 votes, were *against the railroad*. And yet that case is used by the journalist as his other proof or illustration that the Supreme Court of Missouri was controlled by the railroad!

Against a campaign based on such methods of misrepresentation, I protest. The people need the facts about justice and the courts. But what they need is facts, not misrepresentations. Reform is needed, somewhere, somehow. But what intelligent citizen can say where or how, if he finds that he is being fed with garbled facts, which are not facts at all, for the purpose put forward?

The worst thing that can happen to the cause of reform is to have such champions. I wish that they would put up their muckrake on their shoulder and go off quietly to some other stable, and leave the cleaning of this one to people who are willing to restrict themselves to the methods of fair controversy and the "square deal." Demagoguery has no place on either side in the honest clash of views between Conservatism and Progress.

JOHN H. WIGMORE.

RACE IMPROVEMENT

One of the questions that must persistently come to the front in the minds of thinking educators and social workers is this: Does all that we accomplish in the way of individual improvement of delinquents and defectives of every other sort stop with the individual who is immediately affected, or does it extend to the stock of future generations, that is, to the race? Because of the meager evidence for the extension of these accomplishments it is generally assumed that the most that can be expected is the improvement of the individual directly affected. Some qualification is called for. As a matter of course a group of people who have been reached by our social agencies make their own environment, which is a grade better than that from which they came. To this environment the next generation is heir and consequently it comes upon the stage with an advantage. In a similar manner further successive advances are accomplished. This leaves the fundamental question of *stock* improvement untouched. It increases our sense of responsibility in the matter of protecting each succeeding generation. Under this conception our devices are superficial rather than fundamental. They are in the nature of treatments of symptoms rather than causes. The problem is approached by the biologist through the doctrine of chance variation and natural selection of the fittest for survival. But the problem here is dis-